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Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his follow-up mission to the United States of America*

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his mission to the United States of America from 11 to 27 July 2016. The purpose of the visit was to assess the situation of the rights to freedom of peaceful assembly and of association in the country.

* The present report was submitted after the deadline in order to reflect the most recent developments.

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Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his follow-up mission to the United States of America**

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** Circulated in the language of submission only.

I. Introduction

1. Pursuant to Human Rights Council resolution 32/32, the Special Rapporteur on the rights to freedom of peaceful assembly and of association visited the United States of America from 11 to 27 July 2016, at the invitation of the Government. The purpose of the visit was to assess the situation of the rights to freedom of peaceful assembly and of association in the country.

2. The Special Rapporteur visited Washington, D.C., New York (New York), Baltimore (Maryland), Ferguson (Missouri), Cleveland (Ohio), Phoenix (Arizona), Baton Rouge and New Orleans (Louisiana), Jackson (Mississippi) and Philadelphia (Pennsylvania). In Washington, D.C., the Special Rapporteur met with representatives of several federal government departments, including the Departments of State, Homeland Security, the Treasury, Interior, Labour and Justice. He also met with representatives from the White House, the National Labour Relations Board, the Metropolitan Police Department and the Federal Elections Commission, and with one member of Congress and representatives of other members of Congress. He also met with representatives of police departments and various officials of city, county and state governments in other states.

3. The Special Rapporteur thanks the authorities at federal, state and local levels for their excellent cooperation in the preparation for and throughout the visit. He regrets however that his requests for meetings with representatives of the Department of Defence and of the Supreme Court were declined, despite the relevance of their work to some of the issues of concern.

4. In Cleveland and Philadelphia, the Special Rapporteur observed assemblies organized around the Republican and Democratic Party conventions.

5. The Special Rapporteur met with a diversity of civil society groups and representatives working on the four issues which were his priorities for the visit: (a) freedom of peaceful assembly in relation to protests; (b) labour rights; (c) the effects of counter-terrorism efforts on the rights to freedom of peaceful assembly and association; and (d) freedom of association as it relates to campaign financing. He thanks everyone for taking the time to speak with him, for the written submissions and background material they provided and for the opportunity to observe their work. The Special Rapporteur expresses his appreciation to the individuals and organizations who provided background research and coordinated the meetings for the visit.[1]

6. The United States has been a key supporter of the Special Rapporteur's mandate, as the main sponsor at the Human Rights Council of the resolutions establishing and extending it.[2] It has also sponsored resolutions on peaceful protests[3] and on civil society space, and has played a positive role in the process of accreditation to the Economic and Social Council for non-governmental organizations[4] and in the promotion of lesbian, gay, bisexual, transgender and intersex rights. The Special Rapporteur is grateful for the leadership that the United States has displayed on the issue of civic space generally.

7. He notes with concern, however, that the new administration of President Trump has talked of taking a radically different approach on all fronts: its engagement with the United Nations, its promotion of human rights abroad and even its attitude towards fundamental rights domestically. The signals coming from the current administration, including hateful and xenophobic rhetoric during the presidential campaign, threats and actions to lock out and expel migrants on the basis of nationality and religion, a dismissive position towards peaceful protesters, the endorsement of torture, intolerance of criticism and threats to

[1] Solidarity Center, American Civil Liberties Union, International Center for Not-for-Profit Law, Tova Wang at Demos and pro bono background legal research provided by Lawrence M. Hill and Richard A. Nessler.

[2] Resolutions 15/21, 24/5 and 32/32.

[3] See Council resolution 25/38.

[4] See Council resolutions 27/31 and Corr.1 and 32/31.

withdraw funding from the United Nations, are deeply disturbing. Meanwhile, legislatures in at least 19 states are taking a cue from the administration and pushing new bills — some proposed, some passed — to restrict the right to freedom of peaceful assembly.[5] The Special Rapporteur urges the administration to continue the United States tradition of leading and supporting the rights to freedom of peaceful assembly and of association and the mandate.

8. The present report builds on relevant aspects of the findings of various working groups that have undertaken missions to the United States, including the Working Group of Experts on People of African Descent (A/HRC/33/61/Add.2); the Working Group on the issue of discrimination against women in law and in practice (A/HRC/32/44/Add.2); and the Working Group on the issue of human rights and transnational corporations and other business enterprises (A/HRC/26/25/Add.4).

9. The Special Rapporteur emphasizes that his frame of reference for the present report is the obligations of the United States arising from its membership of the United Nations, the International Labour Organization (ILO) and other multilateral organizations, and its ratification of a number of international human rights instruments.[6] He stresses the requirement that States must ensure that their domestic laws conform to international human rights standards.

10. Finally, the Special Rapporteur offers his report and recommendations in the spirit of constructive engagement. He is under no illusions concerning the impediments to reform created by the complex legal and political environment, yet he is reassured by the passion, dedication and tirelessness demonstrated by advocates for equality, justice and fairness with whom he met.

II. Background and context

11. The United States of America is a federal State with a complex multilayered political and legal system. It is an "old" democracy, a military superpower and an economic giant. Authority and responsibility to ensure the free exercise of assembly and association rights is distributed across all levels of government. Nevertheless, under international law, the responsibility to ensure compliance with obligations under ratified international instruments lies with the federal Government.[7]

12. The Special Rapporteur provides his assessment against the backdrop of the stature of the United States as a long-standing democracy that holds itself and other States to high democratic ideals. He nevertheless wishes to emphasize that democracy is a continuous process that is never truly complete. It is a structure and the task of Governments and citizens is to continually build upon that structure, strengthening its foundation and cultivating its resilience.

13. While the Special Rapporteur's focus is the status of the rights to freedom of peaceful assembly and of association, he necessarily situates his assessment within the context of several overarching concerns. It is impossible to discuss those rights, for example, without issues of racism pervading the discussion. Racism and the exclusion, persecution and marginalization that come with it, affect the environment for exercising the rights to freedom of peaceful assembly and of association. Understanding that context means looking back at 400 years of slavery, the Civil War and the Jim Crow laws, which destroyed the achievements of the reconstruction era, enforced segregation and marginalized the African-American community, condemning it to a life of misery, poverty and persecution. It means looking at what happened after the Jim Crow laws, when the old philosophies of exclusion and discrimination were reborn, cloaked in new and euphemistic

[5] See www.freeassembly.net/news/us-protest-bills/.

[6] For a full list, see http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=187&Lang=EN.

[7] See Human Rights Committee general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 4.

terms. A stark example is the so-called war on drugs, which has resulted in a situation where 1 in every 15 black men is currently in jail[8] and 1 in every 13 African-Americans has lost their right to vote owing to a felony conviction.[9]

14. In contradistinction, Wall Street bankers looted billions of dollars through crooked schemes, devastating the finances of millions of Americans and saddling taxpayers with a massive bailout bill. Meanwhile, crimes against workers, including wage theft, sexual abuse, union busting and more, remain rampant; yet we do not hear of a "war on Wall Street theft" or a "war on abusive employers." Instead, criminal justice resources go towards enforcing a different type of law and order, targeting primarily African-Americans and other minorities. As a result, there is justifiable and palpable anger in the black community that needs to be expressed. This is the context that gave birth to the non-violent protest movement Black Lives Matter and the context in which it must be understood.[10]

15. The Special Rapporteur also recognizes that his visit coincided with a tumultuous election period marked by divisive and corrosive rhetoric. The election period sharply exposed the intolerance, inequality and exclusion that had been building up without being adequately addressed.

16. Within the election milieu, examining the impact of campaign financing was timely. True democratic participation requires a system where ordinary people can mobilize, organize and claim their rights, including through the ballot. However, in the United States a majority of people are locked out of political spaces because access to leaders is so dependent on money, i.e., "political contributions". The result is a type of open and legalized corruption, where politicians unapologetically prioritize the views and policy preferences of their paymasters — a few super-wealthy individuals and corporations. Those policies often conflict with the aspirations of the majority of citizens and are detrimental to marginalized groups, such as communities of colour, women and migrant workers.

17. The Special Rapporteur repeatedly heard that discrimination and bias on the part of law enforcement agents on the basis of race, religion, gender and other prohibited factors were common in the United States. Examples included:

(a) Racial and religious bias in combating terrorism and violent extremism;

(b) Routine use of racial and ethnic profiling by immigration and law enforcement agencies, now extending to the so-called "Muslim ban" executive orders of the current administration, the first now revoked and the second legally contested;

(c) Policies that incentivize actions with an indirect and disproportionate impact on disadvantaged groups, for example police departments raising revenue through fines and rewarding or sanctioning police officers based on the number of arrests they make.

18. The role of law enforcement in keeping America safe from internal and external threats should not be understated. The dangers they face in their day-to-day work are very real, as illustrated by the tragic murders of eight police officers in Baton Rouge and Dallas, Texas, around the time of the Special Rapporteur's visit. On the whole, law enforcement agencies and officers take pride in their work and the service they provide. Many perform their duties well, properly engage with relevant stakeholders, respect the rights of individuals and enjoy the confidence and trust of the communities they serve. The Special Rapporteur found the police department in Jackson to be a particularly good example of

[8] See www.aclu.org/infographic-combating-mass-incarceration-facts?redirect=combating-mass-incarceration-facts-0.

[9] See www.sentencingproject.org/issues/felony-disenfranchisement/.

[10] That background is discussed at length in the Special Rapporteur's preliminary observations presented at the conclusion of his visit on 27 July 2016, available from www.freeassembly.net/news/usa-statement/.

this. Nevertheless, systemic shortcomings still exist in some jurisdictions, as evidenced by investigations of the Civil Rights Division of the Department of Justice.[11]

19. Of significant concern is the vehement rejection in some quarters of any scrutiny or criticism of misconduct by law enforcement officials. The Special Rapporteur was informed that the police often make arrests for perceived disrespect or disagreement with their actions; that some supporters have adopted "Blue Lives Matter" as a phrase in opposition to the Black Lives Matter movement; and that some states are considering or have enacted laws that classify attacks on police as a hate crime with aggravated sentences.

20. The Special Rapporteur is disturbed by the hostility towards the Black Lives Matter movement, which seeks, among other things, to reform law enforcement practices in the wake of numerous killings of African Americans by the police. Perhaps most troubling is the fact that some Americans view the movement as divisive, when in fact it is about inclusion. The movement is not about demanding special status or privilege for African Americans, it is about a historically and continuously targeted community seeking to elevate itself to the same level as everyone else. Members of Black Lives Matter exercise the rights to freedom of peaceful assembly and of association to aggregate their voices, address problems and achieve change. The Government has an obligation under international law to protect and promote their ability to do this.

21. In his annual report to the Human Rights Council in 2016 (A/HRC/32/36), the Special Rapporteur highlighted the challenges posed by various types of fundamentalism to the exercise of rights. During his visit to the United States, he found that market fundamentalism — the idea that free market economic policies are infallible and are the best way to solve economic and social problems, coupled with intolerance towards competing ideas — taints many policies by undermining human rights.

22. Nowhere is the free market fundamentalist approach more evident than in the approach to labour rights in the United States, which overwhelmingly favours the well-being of employers over workers. The statistics paint a depressing picture: according to the Bureau of Labour Statistics, the unionization rate in the United States was a mere 11.1 per cent in 2015, one of the lowest rates among members of the Organization for Economic Cooperation and Development.[12] Furthermore, 28 states have enacted so-called right to work laws, which are deliberately crafted to weaken unions by eroding their base of dues-paying members. The Special Rapporteur is appalled by the deceptive labelling of these laws, which are marketed as protecting workers' rights, but in fact erode them.

23. Although unions have fought hard to maintain their ground, employer lobbies have the upper hand, aided by the revolving door between the private sector and political office, the generally collaborative relationships between companies and government agencies and lax enforcement for violations of workers' rights. Employers engaged in serious violations of workers' rights, such as wage theft, slavery, evidence tampering, giving misleading information, threatening workers, sexual harassment and assault, frequently avoid criminal sanction owing to weak enforcement that simply "encourages" them to comply with the law. In this permissive environment, many European companies aggressively pursue anti-union activities in the United States that they would never contemplate in Europe.[13]

24. Market fundamentalism also undermines the land, territorial and resource rights of indigenous peoples. Due to time constraints, the Special Rapporteur was unable to visit the site of the Dakota access pipeline protests, but continues to follow closely the community's struggle for the protection of its interests.[14] He is alarmed by how the aggressive free-market fundamentalist approach of the current administration has influenced its dismissive response to the Dakota access protests. That stance completely rejects the interests of those

[11] See www.justice.gov/crt/page/file/922456/download.

[12] See https://stats.oecd.org/Index.aspx?DataSetCode=UN_DEN.

[13] See Human Rights Watch, "A strange case: violations of workers' freedom of association in the United States by European multinational corporations", available from www.hrw.org/report/2010/09/02/strange-case/violations-workers-freedom-association-united-states-european.

[14] See www.freeassembly.net/news/dakota-pipeline-protests/.

who elevate other values above monetary profit and will limit opportunities for marginalized groups to exercise their rights to assembly and association, precisely at the time when those rights are needed most.

25. The Special Rapporteur has been heartened, however, by the overwhelmingly positive response of United States civil society to this difficult environment. Indeed, at the time of writing, the United States is seeing some of the largest and most frequent protests in its history. The energy of civil society in the face of such obstacles is a credit to its resilience and is something of which the country should be proud.

III. Freedom of peaceful assembly

A. General legal framework

26. The first amendment to the Constitution prohibits Congress from enacting legislation to curtail the right to peaceful assembly. The regulation of assemblies in the United States is generally implemented at the local or municipal level.

27. The Supreme Court has held that the right to assemble is not absolute, allowing the authorities to impose restrictions on the time, place and manner of assembly and to require permits. Issuing authorities are prohibited from restricting assemblies based on their content. The exercise of the right to freedom of peaceful assembly is relatively healthy in the United States, even when permits are not secured. However, the Special Rapporteur remains concerned by the pervasiveness of the permit system and its potential for abuse and arbitrary enforcement. The fact that the authorities have a permissive attitude towards an "unauthorized" assembly today does not guarantee that they will have the same attitude tomorrow.

28. The Special Rapporteur notes that the interpretation by the Supreme Court of this right falls short of international standards, owing to the approach to restrictions on the time, place and manner of assembly.[15] The practice and jurisprudence in the United States suggest a heightened protection for freedom of expression with less emphasis on protecting the distinct right to freedom of peaceful assembly.

29. International human rights law favours a prior notification system rather than a permission system for holding assemblies (see A/HRC/20/27, para. 28). Notification is not the same as permission; its purpose is to allow the authorities to facilitate assemblies and to take measures to protect protesters and the rights and freedoms of others, and ensure public safety and order. Moreover, international standards dictate that spontaneous assemblies should be exempted from notification requirements and that organizers of assemblies should never be sanctioned for failure to provide notification (see A/HRC/31/66, paras. 23-24). That risks turning the right into a privilege, where the exercise of fundamental freedoms is dependent on State discretion.

30. Implicit in the right to freedom of peaceful assembly is the right to choose logistical arrangements, including the time and location of an assembly. As such, the complete prohibition of assemblies at certain locations (including by granting control of public areas to private interests, which then prohibit assemblies) is problematic and may constitute a violation of the right to assemble under international law, since it prevents a case-by-case consideration of restrictions of the right.

31. Other laws and policies have the potential to impede the free exercise of the right to assembly. The Special Rapporteur was informed that many local authorities impose permit application fees, some of which carry prohibitive costs (as high as $400 in Phoenix). Others require applications long in advance, for example a minimum of three months' notice for a public procession in Phoenix and 30 days in advance for a demonstration in a New York City public park. Applicants for permits from the New York City Department of Parks and

[15] See Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights, *Guidelines on Freedom of Peaceful Assembly* (2010), p. 17.

Recreation are required to indemnify the city for any claims, damages or expenses resulting from their assembly.[16] The notice period should not be unreasonably long and the procedure should be free of charge and widely accessible (see A/HRC/31/66, para. 22).

32. More troubling is the increasingly hostile legal environment for peaceful protesters in some states. This is evidenced by a large number of legislative proposals at the state level aimed at criminalizing or impeding the rights to freedom of peaceful assembly and of expression.[17] There were more than 20 such proposals in some 19 states, as of late March 2017.[18] One of the more egregious examples is a bill in Florida, which would eliminate liability for a driver who unintentionally injures or kills a protester interfering with traffic during an unpermitted demonstration.[19] Other bills in Iowa and Missouri would make the obstruction of traffic by protesters a felony, punishable by five and seven years in prison, respectively.

33. The Special Rapporteur is dismayed by the blatant contempt for the importance of the right to assembly illustrated by these bills, as well as the prioritization of the convenience of motorists over the right to life of protesters. Peaceful protests are a legitimate use of public space. The exercise of that right may not always be convenient, but it is nonetheless an essential component of any functioning democracy (see A/HRC/31/66, para. 5). A certain level of disruption to ordinary life, including disruption of traffic, annoyance and even inconvenience to commercial activities must be tolerated if the right is not to be deprived of meaning (ibid., para. 32).

B. Management of assemblies

34. The Special Rapporteur was pleased to observe that the police in the cities he visited had a good understanding of the best practices of managing assemblies and that they had the capacity to implement them, which they often had occasion to do. However, he was troubled to learn that they sometimes diverged from those best practices, favouring intimidating and discriminatory tactics.

35. One of the most troubling examples of that has been the use of military equipment and excessive force against peaceful protesters. Both were particularly evident during protests organized to protest against the killings of African Americans in Ferguson, Baltimore, Baton Rouge and elsewhere.

36. The Special Rapporteur heard numerous complaints that the police had used excessive force to arbitrarily arrest protesters for minor acts, such as stepping off crowded sidewalks, and had targeted them based on their race or ethnicity. Many protesters also said they had been arrested for or charged with offences, such as obstructing traffic, failure to obey a police officer and resisting arrest in dubious circumstances, that suggested police abuse of power. Other common complaints mentioned — and in some instances observed by the Special Rapporteur — included an overwhelming police presence during protests; confiscation of devices used to record potentially unlawful police behaviour and deleting of recordings; infiltration of protests by plain clothes police officers; and pre-emptive home visits by law enforcement agents to warn against attending protests. Some potential protesters were also threatened with the resurrection of previous charges as a means of intimidation.

37. The Special Rapporteur is also concerned to learn that it has become commonplace for police to respond to peaceful demonstrations with military-style tactics, full body armour and an arsenal of weaponry better suited to a battlefield than a protest. While he is sensitive to police concerns that they must be properly equipped to deal with potentially

[16] Organizers of assemblies should not be held liable for failure to perform their responsibilities if they have made reasonable efforts to do so. See OSCE, *Guidelines*, para. 5.7.

[17] See www.freeassembly.net/news/us-protest-bills/ and www.ohchr.org/Documents/Issues/Opinion/Legislation/OL_USA_3_2017.pdf.

[18] See www.icnl.org/US_protest_law_tracker.pdf.

[19] See www.flsenate.gov/Session/Bill/2017/1096/BillText/Filed/PDF.

unlawful activity, he is convinced that the widespread militarization of police needlessly escalates tensions and provokes equally aggressive reactions. Protesters are not enemies and should never be treated as such. It is ill-advised to use military equipment to manage activities so fundamental to democratic societies. The Special Rapporteur believes more facilitative and collaborative approaches would lead to better management of protests overall. He is encouraged, however, by the attempts made by the previous administration to scale back the Department of Defence 1033 programme, which allows the transfer of military equipment to state and local law enforcement agencies, some of which is used to police peaceful protests.[20]

38. It was reported to the Special Rapporteur that demonstrations by different communities were policed differently, with a racial, ethnic, cultural and class-based bias. The curfew imposed in Baltimore, ostensibly to quell protests after the death of Freddie Gray, was aggressively enforced in black communities, but not in predominantly white ones. Stop-and-search tactics, implemented as part of the "broken windows" approach to policing adopted in New York City and elsewhere, predominantly target minority individuals. The Special Rapporteur also heard reports of Immigration and Customs Enforcement agents conducting surveillance at assemblies focused on migrant issues. The agency has no role to play in managing assemblies; the presence of its agents only instils fear and chills the exercise of assembly rights. Moreover, migrants are often excluded from other forms of democratic participation, such as the right to vote, leaving peaceful assemblies as one of the only tools they have to voice their concerns (see A/HRC/26/29, para. 25). The Government should encourage the exercise of this right by everyone, especially marginalized groups.

39. Aggressive street policing also affects assembly rights: young African Americans who met with the Special Rapporteur in a number of cities described their inability to meet in public places, even within their own communities, without police harassment. The effects of such encounters, repeated over a lifetime, can snowball: a minor criminal offence, or even an arrest without substantiated charges, can show up on a background check, making it difficult to find a job, secure a student loan or find a place to live. That marginalization in turn makes it more likely that a person will turn to crime, for lack of any other option, and the vicious cycle continues.

40. The Special Rapporteur observed a distinct lack of independent and effective oversight of law enforcement, particularly regarding the broad discretion the police are given to arrest and investigate suspects. While there are benefits to granting law enforcement agencies autonomy, that autonomy has in many instances morphed into overreach. The Special Rapporteur found that one of the most effective ways to address such abuses is the use of "consent decrees", which allow the federal Department of Justice to identify systemic problems with local enforcement and supervise reforms.[21] The Special Rapporteur was thus disappointed to learn in April 2017 that the Attorney General had ordered a review of all consent decrees, in effect prioritizing respect for law enforcement over accountability for abuses.[22] This is troubling, since true respect can only be achieved through trust and accountability.

41. To that end, the Special Rapporteur is concerned about the Law Enforcement Officers' Bill of Rights (and its variants), which prevents prompt and effective investigation into possible misconduct by police and creates an impression that police officers deserve privileged status not granted to others facing similar investigations. The lack of federally collected, publicly available and comprehensive data on many issues related to police abuse of power prevents an accurate assessment of the scope of the problem. The Special Rapporteur is encouraged, however, by the recent decision of the Department of Justice to collect statistics of all deaths that occur at the hands of the police.

[20] See www.whitehouse.gov/the-press-office/2015/01/16/executive-order-federal-support-local-law-enforcement-equipment-acquisit and www.justice.gov/sites/default/files/criminal-afmls/legacy/2015/05/21/05-18-15-wire.pdf.

[21] See www.justice.gov/crt/special-litigation-section-cases-and-matters0.

[22] See www.documentcloud.org/documents/3535148-Consentdecreebaltimore.html.

IV. Freedom of association

42. The right to freedom of association is implicitly guaranteed by the first and fourteenth amendments of the Constitution, read together, which protect the rights of free speech and assembly and due process, as affirmed by the Supreme Court in a number of cases.[23]

A. Workers' rights

43. Workers' right to freedom of association is guaranteed in various international human rights instruments. The United States is obliged by virtue of its membership of ILO to respect, promote, facilitate and realize the rights enshrined in ILO conventions, including the right to freedom of association and to collective bargaining. The Special Rapporteur is encouraged by the positive role that the United States plays internationally by regularly championing those rights. He is particularly pleased to note that the Government played a leading role in defeating efforts at ILO to roll back the right to strike.

44. That stands in stark contrast to the situation domestically. Interlocutors expressed a range of concerns, both in relation to the legal framework and the practical reality of exercising the right to freedom of association in the workplace, portraying a dismal picture for workers.

45. Workers' rights to associate, organize and act collectively are regulated by several pieces of legislation at the federal, state and local levels. Those laws are supplemented by court and tribunal decisions that establish related standards and principles. The Special Rapporteur's primary focus was on the federal statute, the National Labour Relations Act. Overall, he finds that the legal framework legalizes practices that severely infringe workers' rights to associate. It also provides few incentives for employers to respect workers' rights. That is largely due to the fact that enforcement is weak and underfunded, particularly when compared to the massive resources dedicated to other law enforcement functions in the United States. This is shameful, considering that various forms of wage theft by employers cost American workers as much as $50 billion dollars annually, more than three times the $14.3 billion that Americans lost to common property crimes in 2015.

46. The National Labour Relations Act governs labour relations in the private sector, guaranteeing employees the right to form and join trade unions, collectively bargain and engage in concerted activities. However agricultural workers, domestic workers in private homes, managers, supervisors, independent contractors and others are excluded from coverage by this law. Employers increasingly categorize workers under these groupings in order to prevent them from organizing and to avoid the demands of improved working conditions. Such workers have no recourse under the Act for violations of their rights. Some might have coverage under state laws, but protection is often inadequate because of ineffective redress mechanisms.

47. Strikes are among the concerted activities protected by the National Labour Relations Act. The law prohibits secondary boycotts, however, preventing workers from soliciting and expressing solidarity for strikes among workers of different employers. Employers can permanently replace employees engaged in economic strikes (concerning higher wages, shorter hours or better working conditions), but not employees striking against unfair labour practices (such as interfering with an employee's right to organize, join or assist a union). Moreover, replacement workers can vote to decertify a union on strike. In the Special Rapporteur's view, the permanent replacement of striking workers negates the right to strike, stripping employees of their strongest tool for pressing their demands. While the right to strike can be restricted in international law, such restrictions cannot be aimed at the destruction of the right itself, which permanent replacement effectively achieves.

[23] See for example, the cases of *Rotary Int'l v. Rotary Club of Duarte*, 481 U.S. 537 (1987) and *NAACP v. Patterson*, 357 U.S. 449 (1958).

48. The Special Rapporteur is also gravely concerned that the National Labour Relations Act allows states to enact so-called right to work laws, which are better described as "union busting" or "right to work for less pay" laws. These laws, currently enacted in 28 states, prevent compulsory payment of dues or fees to unions. Proponents of such laws style them as a promoting "fairness"; no one should be forced to pay union dues. That argument is intentionally misleading, however, because the Act requires unions to represent and bargain on behalf of all employees in a bargaining unit. Thus, under "right to work" laws, workers paying no dues continue to reap the benefits of union representation. The laws thus eliminate the most compelling incentives for belonging to a union and serve no purpose except to erode the dues-paying membership base of unions.

49. The Special Rapporteur deplores the use of "right to work" terminology to describe practices that actually violate or weaken fundamental rights. That language falsely suggests that the laws promote workers' rights, but by weakening unions they contribute to exactly the opposite: unfair labour practices, poor working conditions and potential retribution or unemployment for those advocating for workers' rights. The Special Rapporteur recalls that international human rights law requires States to take the necessary measures to ensure the exercise of rights, including labour rights. This means that States cannot take action to undermine rights and cannot maintain a neutral approach in response to third party actions that undermine those rights (see A/71/385, para. 80 and A/HRC/32.36/Add.2, para. 68).

50. Under section 8 of the National Labour Relations Act, employers enjoy the right to express any views, argument or opinion without threat of reprisal or force or promise of benefit. The section is styled as the employers' right to free speech, but in practice it facilitates pervasive interference by employers with the ability of employees to form or join unions. For example, employers may hold "captive audience" meetings, which employees are obliged to attend, at which they can aggressively discourage union activity. Employers may also threaten employees' right to strike by emphasizing their ability to permanently replace striking workers and engage companies to help them undermine workers' organizing efforts (a $4 billion dollar union-busting industry). Unions have no right to speak during the captive audience meetings, distribute union literature in the workplace, conduct meetings in the workplace without management being present, or hold similar captive audience meetings. All of this creates an unbalanced environment, where it is extremely difficult for employees to make free and informed choices about unionization.

51. The National Labour Relations Act defines unfair labour practices, but does not adequately protect workers from those practices. The law provides some remedial measures, which in practice are mostly inadequate. There are no deterrent penalties that would abate future violations of workers' rights. Employers found to have engaged in unfair labour practices are required, for example, to post notices promising not to engage in those practices again. If they are found to have dismissed workers for engaging in union (formation) activities, the only remedies are reinstatement and back pay. The lack of fines, punitive damages and compensation provisions compounds the injustice of a redress process characterized by long delays. In addition, employers have frequent recourse to appeal processes as a way to maintain the status quo, often to the great disadvantage of workers.

52. Even where unions are able to form or win exclusive representation in collective bargaining, employers in many cases do not engage in good faith negotiations. Between 1999 and 2003, more than 50 per cent of newly organized bargaining units were unable to secure a collective bargaining agreement one year after the union certification election and 37 per cent had no agreement after two years. Employers who are found to delay or engage in other bad faith tactics are merely required to return to the bargaining table, without any sanction that would encourage an agreement. The effect of this long drawn-out process and the lack of remedy is to demoralize and frustrate union members, thus weakening their bargaining power. This is the situation of workers at ASARCO in Arizona, whom the Special Rapporteur met during his visit.

53. The National Labour Relations Board is the federal statutory body empowered to ensure that workers can exercise their rights to organize and determine their collective bargaining representatives, and to prevent and remedy unfair labour practices in accordance with the National Labour Relations Act. The Special Rapporteur's meeting with the Board

was illuminating of the challenges that the agency faces. For example, its funding is authorized by Congress and is thus prone to partisan interests that can manifest as budget cuts or funding with policy riders, preventing it from pursuing a particular agenda. This seriously curtails the independence and effectiveness of the Board. It also has a very limited set of instruments to ensure implementation of its decisions.

54. The Special Rapporteur was alarmed to learn that Mississippi and other states openly court companies by touting the lack of unionization and ability to exploit workers. The situation at the Nissan plant in Canton, Mississippi, where the company has aggressively worked to prevent unions from organizing is an egregious example. The plant is one of only 3 Nissan plants that are not unionized out of a total of 55 manufacturing facilities worldwide and all 3 of those plants are in the south of the United States. The company no longer hires new employees directly, enabling it to avoid employer responsibilities; employment of new workers is outsourced to an agency, which pays significantly lower wages and benefits.

55. In a letter to the Special Rapporteur dated 23 February 2017, Nissan defended its handling of the situation at its plants in the south of the United States and emphasized that it applied domestic law and paid relatively high wages for the region. The Special Rapporteur appreciates the engagement of Nissan, but finds the response emblematic of the duplicity of multinational corporations on the issue of workers' rights. The poor environment for labour rights in the United States today is almost entirely a legacy of decades of political lobbying by well-funded business interests, which outspend workers by several orders of magnitude. Indeed, some union-busting efforts at the Nissan plant in Canton were linked to the Center for Worker Freedom, a special project of the group Americans for Tax Reform. The latter is almost entirely funded by corporate interests. Whether or not Nissan itself engages in union-busting is only a small piece of the puzzle. The bigger issue is that the company, along with many others, knowingly benefits from such efforts. The Special Rapporteur finds this complicity in the violation of workers' right to freedom of association unconscionable.

B. Migrant workers' rights

56. The plight of migrant workers, both documented and undocumented, further highlights the appalling situation of workers in the United States. Guest workers are particularly vulnerable to exploitation and violation of their rights because of their precarious immigration status. They are the most in need of the benefits that organizing and collective action offer, yet are the least able to take advantage of the rights to association. The potential that lies in using the rights to association as a vehicle for improved working conditions cannot be understated, as the Special Rapporteur saw at first hand during a meeting with teachers from the Philippines who had been trafficked to work in Louisiana. The teachers were cheated out of tens of thousands of dollars and forced into exploitative contracts by an international trafficking ring. Despite tremendous odds, they had managed to organize, expose the wrongdoing of the traffickers and improve their conditions of work.

57. The abuses suffered by migrant workers often start before they even arrive in the United States, when they go into debt to pay exorbitant fees to recruitment agencies. The debt leaves them vulnerable to further exploitation and less likely to complain about or report abuse, such as terms of employment which are significantly worse than promised; confiscation of passports; unsafe working conditions; appalling housing conditions; denial of their freedom of movement; denial of their right to organize, associate and assemble; physical, psychological and sexual harassment; unpaid or underpaid wages; denial of access to recourse; and the threat of deportation or actual deportation.

58. A key driver behind the injustices facing documented migrants is the H-visa regime that ties the legal immigration status of a worker to a single employer. This ensures that the balance of power favours the employer and has profound consequences for workers in precarious and exploitative working environments. The arrangement is not dissimilar to the *kafala* system of bonded labour practised in a number of countries in the Middle East. Workers who attempt to organize or otherwise seek remedies to labour-related issues

jeopardize their continued and future employment, as they may be terminated, deported and blacklisted for future opportunities.

59. Undocumented workers in Arizona bore witness to the grave situation they and other workers face. They described being subjected to stop-and-search actions based on racial profiling, surveillance, arbitrary raids, illegal arrests, arbitrary detention, denial of food and medical attention, denial of access to family and lawyers during detention and solitary confinement. Partly as a result of those measures, many undocumented migrant workers are fearful of exercising their association rights in general and even more so in the workplace. The Special Rapporteur emphasizes that under international law all workers, regardless of nationality or immigration status, are entitled to their human rights, including the right to freedom of association. Crossing national borders, whether legally or otherwise, does not take away those rights.

60. The Special Rapporteur also finds it problematic that immigration enforcement takes priority over protecting the labour rights of undocumented workers, so much so that the Supreme Court has ruled that undocumented workers are not entitled to back pay because they are not legally authorized to work. Workers are also deported despite ongoing labour disputes against their employers.

61. The authorities have taken various steps to address some of these concerns, but more needs to be done to ensure that the measures reflect the magnitude of the problem, address the root causes and are efficiently implemented. Examples of challenges include:

(a) "T" visas for trafficking victims are difficult to obtain and cover only a small proportion of workers in need of protection for exercising their rights;

(b) The inter-agency task force that facilitates coordination of agency actions so that immigration proceedings do not interfere with labour investigations is perceived by some as ineffective and not inclusive of all stakeholder perspectives;

(c) Understaffing at the Department of Labour for tackling migrant-related abuse, which limits its ability to carry out inspections and degrades the quality of inspections, investigations and remedial actions;

(d) Work visa and labour recruitment frameworks, which are at the root of many of the problems discussed above, remain unchanged, despite overwhelming evidence of their negative effects. While Immigration and Customs Enforcement has exercised prosecutorial discretion to refrain from deportation in some cases that implicate protected civil, labour and human rights, that discretion is inconsistently applied and sometimes not exercised at all.

C. Counter-terrorism

62. The Special Rapporteur acknowledges the responsibility of governments to ensure national security and the difficulty of this task. However, he remains deeply concerned that some measures instituted in the United States may impermissibly infringe upon the right to freedom of association.

63. The Special Rapporteur would like to commend the United States for the pivotal role it, together with a coalition of civil society organizations, played in recently securing a revision of recommendation 8 of the Financial Action Task Force. The original version of the recommendation implied that the non-profit sector was inherently vulnerable to exploitation as a conduit for money laundering or terrorist financing. That language has now been changed. The Task Force now advocates a more nuanced approach to counter-terrorism and measures to combat money laundering.

64. In his discussions with interlocutors, the Special Rapporteur was informed that both the United States legal framework relating to counter-terrorism and its implementation raise concerns for the work of non-profit organizations, particularly those working in the humanitarian field in conflict areas.

65. Concerns over the legal framework include:

(a) That the definition and description of what constitutes "material support" to terrorists or terrorist organizations are overly broad. They potentially criminalize legitimate activities by non-profit organizations, if support provided by these groups, humanitarian or otherwise, reaches the hands of terrorists, even if inadvertently. Thus, the provision of water, medical care or human rights training in conflict areas becomes nearly impossible, as it might directly or indirectly benefit terrorists. The intention of the organization is immaterial to the crime. Furthermore, the fact that according to the United States Government, inadvertent provision of material support is not criminalized under relevant laws does not provide adequate protection for legitimate humanitarian activities. The tragic irony is that these rules are effective in stopping the flow of humanitarian aid to war-torn areas, but have failed to stop the flow of weapons to many terrorist groups. So-called Islamic State, for example, reportedly has a substantial arsenal of arms and materiel produced in the United States;

(b) That the administrative authority to designate terrorist groups under the International Emergency Economic Powers Act derives from emergency powers triggered by an unusual and extraordinary threat to the national security, foreign policy or economy of the United States. Designation procedures are thus subject to a low evidentiary threshold, considering the impact they have on non-profit organizations so designated, are not adequately transparent and do not offer the same due process safeguards that are embedded in a criminal or civil proceeding. Furthermore, the USA PATRIOT Act of 2001 provides for the blocking of assets during an investigation, meaning that an organization is rendered unable to function without any prior determination of wrongdoing;

(c) The Department of the Treasury has broad powers to designate entities and individuals as "specially designated global terrorists" and freeze all of their United States assets if it has "reasonable suspicion" that they provide financial, material or technological support to a terrorist group, or are associated with one. Affected organizations may seek an administrative review, but the review process is conducted ex parte and in closed proceedings. There is no obligation to provide applicants with the evidence against them, thus preventing them from mounting an effective defence.

66. Although the Government has not routinely relied on such laws to pursue charities, the Special Rapporteur was informed that at least nine charities have been effectively shut down, although none since 2009. The lack of recent prosecutions does not guarantee that a future Government will not take a different approach. The mere existence of this regulatory regime, with its harsh punishments, limited transparency and lack of due process protections, contributes to creating an environment where many people, particularly Muslims, fear exercising their association rights.

67. Interlocutors also highlighted a number of issues in the implementation of the legal framework:

(a) Muslim charities feel particularly targeted by counter-terrorism measures and this has had a chilling effect on charitable giving, which is a pillar of their religious practice. Of the nine organizations whose assets have been seized by the Department of the Treasury, seven are Muslim charities. At least six other Muslim organizations have been targeted for investigation and raids, which were publicized, creating a perception that they were engaged in terrorist financing, despite the fact that no designation or criminal proceedings subsequently took place. The damage caused to the reputation of those organizations was enormous, in some cases fatal to their continuing existence, and detrimental to their communities;

(b) The Special Rapporteur was informed that the terrorist screening database maintained by the Federal Bureau of Investigation (FBI) (the so-called "watch list" from which the "no fly" and secondary security screening selection lists derive) contains at least 1 million names of individuals, most of whom are Muslims. The watch list is reportedly subject to some oversight, aimed at ensuring that proposed additions meet a standard of "reasonable suspicion", and proactive reviews are regularly carried out. However, structural deficiencies, such as a low threshold for listing individuals; inadequate due process protections and avenues for redress; insufficient identifying information,

[illegible] for *[illegible]* and *[illegible]* and *[illegible]* for delisting, undermine these efforts.

69. A broad array of stakeholders, including political and religious groups, civil and human rights advocacy groups and Muslim leaders, narrated chilling experiences of surveillance, infiltration, home visits, attempts at recruitment as informers and entrapment by law enforcement agents. In most cases, such actions appeared to be taken in response to these individuals exercising their rights to freedom of peaceful assembly and of association.

68. The Department of Homeland Security programme on countering violent extremism is another approach that has been adopted to combat terrorism. While the approach is billed as a means to empower communities and build resilience to extremism, it has flaws both in conception and implementation.

69. The programme is based on the assumption that a defined set of factors or conditions such as psychological disorders, social marginalization, alienation and political grievances are precursors to radicalization, violence or terrorism. There is no conclusive credible evidence that this is true, yet the policy calls for increased community vigilance to help identify individuals who allegedly exhibit such characteristics. This approach risks drawing in wholly innocent individuals, adversely interfering with community relations and is ultimately counterproductive in preventing radicalization. Also problematic is the fact that the Government has kept all but the broadest outlines of the programme secret.

70. Although the programme does not explicitly target any one community or group, pilot programmes are reportedly focused largely on Muslim communities. Interlocutors spoke about the surveillance to which Muslim communities are subjected, without suspicion of wrongdoing, under the guise of community engagement, including the presence of undercover police and FBI agents in community activities, recruitment of informers and threats to induce collaboration and entrapment, all of which have a chilling effect on community participation and potentially violate the rights to freedom of association, peaceful assembly, expression and privacy. The underlying assumption that whole communities are particularly susceptible to violent extremism is alarming.

71. The Special Rapporteur observes the striking similarities between the programme on countering violent extremism and the "Prevent" strategy in the United Kingdom of Great Britain and Northern Ireland. He has expressed deep concern about the latter programme (see A/HRC/35/28/Add.1) and considers it manifestly unwise that the United States has not sufficiently mitigated its programme in the light of the shortcomings identified in the Prevent strategy.

72. The Special Rapporteur is further concerned about differential treatment of charities and business entities in the realm of counter-terrorism, as exemplified by the Chiquita Brands case. Despite admitting to financing terrorist groups in Colombia, Chiquita Brands settled a criminal claim by the United States Government in 2007 by paying a $25 million fine, a mere fraction of the company's estimated value in 2014 of $682 million. In comparison, the impact of a terrorist designation on a charity is far more severe, effectively shutting down the organization, even where no criminal liability is attributed. At least four non-profit organizations have been suspended pending investigation for a possible designation. Moreover, the donations and assets of designated organizations remain frozen, denying beneficiaries any support.

73. In another example of unreasonable differentiation, the Special Rapporteur notes the efforts made by the Government to reassure the banking sector that its supervisory and enforcement approach to violations of money laundering and terrorism financing laws is not one of zero tolerance. Regulators are extremely deferential to banks in this respect, typically preferring to correct most violations through cautionary letters or guidance, rather than large penalties and fines. On the other hand, charities that make good faith, due diligence efforts to comply with the law and guidelines provided by the Government do not receive the same reassurance and accommodation, despite repeated requests.

74. The Special Rapporteur notes the disproportionate and negative impact that this differentiation has on both charities and their beneficiaries. Governments should follow a

policy of sectoral equity in their treatment of businesses and non-profit organizations, so that civil society organizations are able to operate in an environment at least as favourable as the one provided for businesses.

D. Political parties and campaign financing

75. The Special Rapporteur has on previous occasions highlighted the role of the rights to freedom of peaceful assembly and of association in the promotion of democracy and participation in public affairs (see, for example, A/68/299, paras. 5-6).[24]

76. The outsize influence of money in elections in the United States impedes the ability of most people to participate effectively in the conduct of public affairs. Relatively unfettered cash flows to and spending by candidates in federal and state elections allow a small number of people to have an inordinate influence on public policy.

77. Associations are vehicles through which individuals can come together to express and act on their political views and the Special Rapporteur views the effects of unregulated political campaign spending through this lens. A campaign finance system which drastically, and intentionally, favours wealthy associations or individuals may not be a direct restriction on the right to freedom of association, but it acts as one in practice. The enabling environment for associations is necessarily diminished when large amounts of money are a prerequisite for access to political leaders.[25]

78. The Special Rapporteur is particularly concerned that a great deal of the money going into campaign coffers, whether directly to candidates or to their causes, is contributed by a very small fraction of the American population.[26] The amount of money involved, estimated to be nearly $7 billion for the 2016 federal election alone,[27] is staggering and probably unparalleled in the history of democracy. This has three important consequences: first, that small group is likely to have a disproportionate influence over candidates and elected officials. Secondly, the need to raise massive amounts of money in order to mount a successful political campaign, even at the lower levels of government, severely restricts the ability of ordinary people to become candidates, even more so for traditionally marginalized groups, such as women and communities of colour. Third, the system allows the power of associations to be superseded by money, since government policy is often set by the highest bidder.

79. This state of affairs has developed over time, not least as a result of Supreme Court decisions, including cases such as *Citizens United v. Federal Election Commission* in 2010, in which the Court held that the Constitution forbids the Government from regulating "independent" spending on political campaigns, and *McCutcheon v. Federal Election Commission* in 2014, in which the Court struck down aggregate limits on political campaign contributions. Those cases opened the way for a few individuals to contribute large amounts to more candidates and campaigns. Additionally, the absence of limits on campaign expenditures, the lack of effective regulation and inadequate transparency allow vast amounts of money to flow into the political system and, in the case of so called "dark money", funds given to non-profit organizations which are not required to disclose their donors.[28] The system effectively equates money with constitutionally protected free speech,

[24] See also the Universal Declaration of Human Rights, articles 21 and 25.

[25] The environment is further diminished by the fact that more obstacles are placed in the way of labour unions funding political activity than corporations, including stricter disclosure requirements. See for example, www.demos.org/sites/default/files/publications/CorpExplainer.pdf.

[26] According to the Center for Responsive Politics, 100 families had given about 11.9 per cent of all campaign finance contributions as of October 2016. See www.opensecrets.org/news/2016/10/total-cost-of-2016-election-could-reach-6-6-billion-crp-predicts/. See also www.opensecrets.org/overview/cost.php.

[27] See www.opensecrets.org/news/2016/11/update-federal-elections-to-cost-just-under-7-billion-crp-forecasts/.

[28] An estimated $183 million in "dark money" was spent during the 2016 election cycle. See www.opensecrets.org/outsidespending/nonprof_summ.php.

but it fails to take into account that this approach necessarily diminishes the rights to free speech of those who have less money or none at all.

80. Combating corruption and the appearance of corruption are legitimate government concerns. In the cases cited above, however, the Supreme Court narrowly defined corruption to mean bribery or a direct quid pro quo exchange of money for influence.[29] Specifically, the Court distinguished quid pro quo from "general influence" that an individual might have owing to their political contributions. In the Special Rapporteur's view, whether labelled as corruption or not, that distinction legitimizes the disproportionate influence and access that inevitably accrues to a small number of donors who give large sums of money to candidates. This drastically diminishes the choices made by other voters and distorts the democratic process.[30] Government has a legitimate interest in ensuring a level playing field for the expression of the concerns of all citizens and should take measures to ensure that interest.[31]

IV. Conclusions and recommendations

A. Conclusions

81. The United States is at a moment where it is struggling to live up to its ideals on a number of important issues, the most critical being racial, social and economic equality. But it is also, as history shows, a nation of struggle, resilience, diversity and ambition, all of which make it eminently capable of learning from its failures, overcoming its problems and emerging in a better place.

82. Rights to freedom of assembly and of association have always played a central role in past struggles for justice and equality in the United States. Indeed, the country's history reads like a guidebook on just how pivotal those rights can be, from the abolition of slavery to women's suffrage, to the civil rights movement, to the lesbian, gay, bisexual, transgender and intersex rights movement and more. They remain just as important today, at a time when the United States is experiencing some of the deepest social and political divisions in a generation. Those divisions cannot be healed by decrees from above, by criminalizing protests or by keeping people from organizing. Addressing them requires an environment that encourages participation, openness, dialogue and a plurality of voices, and achieving that kind of pluralism requires maximum protection and promotion of the rights to freedom of peaceful assembly and of association.

83. Despite these challenges, the Special Rapporteur is confident in the ability and goodwill of the American public to decisively address these concerns. He also hopes that the Government will continue to be a lead advocate for the rights to freedom of peaceful assembly and of association in both the national and international arena, including in the context of the future renewal of his mandate.

84. The Special Rapporteur offers the following recommendations in the spirit of constructive engagement and hopes that they will inform the Government in its efforts to ensure that its legal framework and practice are in full compliance with the international human rights norms and standards governing the rights to freedom of peaceful assembly and of association.

[29] See Brennan Center for Justice Analysis, "Rethinking campaign finance: toward a pro-democracy jurisprudence" (2015).

[30] See Human Rights Committee general comment No. 25 (1996) on participation in public affairs and the right to vote, para. 19.

[31] See, for example, *Animal Defenders International v. United Kingdom* (2013).

B. Recommendations

General recommendations

85. The Special Rapporteur calls upon the competent authorities to:

(a) **Recognize uniformly in law and practice that the rights to freedom of peaceful assembly and of association are a legitimate means through which individuals, especially those belonging to marginalized groups, can aggregate and express their views, and further recognize that it is incumbent on the authorities to facilitate rather than diminish the exercise of those rights;**

(b) **Ensure that the legal framework affecting those rights conforms to international human rights norms, including by providing an objective and detailed framework through which decisions restricting rights are made, while ensuring that restrictions are the exception and not the rule;**

(c) **Prohibit all forms of racial profiling.**

Right to freedom of peaceful assembly

86. **The Special Rapporteur calls upon the competent authorities to:**

(a) **Eliminate permission requirements and the excessive permit fees required to hold peaceful assemblies, and adopt a notification system instead;**

(b) **Limit restrictions on the time, place and manner of assemblies to those which can be justified under international law as fulfilling a legitimate government interest that is necessary in a democratic society;**

(c) **Refrain from enacting new laws at the local, state and federal levels which unduly restrict the right to freedom of peaceful assembly;**

(d) **Review tactics for the management of assemblies, including the use of military-style weapons and equipment by the police, the use of force and arbitrary arrests, to ensure their compatibility with international human rights norms and standards, including the joint report of the Special Rapporteur and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies (A/HRC/31/66). In particular, ensure that management tactics are directed at facilitating rather than preventing the exercise of assembly rights and do not result in the escalation of tensions;**

(e) **Implement a more facilitative and collaborative approach to policing assemblies to encourage cooperation with and respect for organizers and non-discriminatory policing of protests by communities of colour;**

(f) **Investigate and hold accountable police officers who use excessive force or display discriminatory behaviour when policing assemblies;**

(g) **Recognize in law and in practice that the right to freedom of peaceful assembly is an individual right and that the violent actions of one person at a protest do not strip others of this right. When violence occurs, police should identify, isolate and deal with the individuals engaged in these acts, in accordance with the rule of law, and not indiscriminately arrest, detain or otherwise interfere with the rights of others;**

(h) **Eliminate all federal programmes, such as the Department of Defence 1033 programme, which facilitate the transfer of military equipment to state and local law enforcement departments for use in policing peaceful assemblies;**

(i) **Increase funding and activities for the Civil Rights Division of the Department of Justice, particularly for its programmes monitoring the respect for human rights of local police forces through consent decrees;**

(j) **Follow through on the pledge of the previous administration to create a database that accurately tracks national statistics concerning deaths caused by the police;**

(k) **Abandon the "broken windows" policing tactics that encourage racial discrimination and the systematic harassment of African Americans and other marginalized communities in the context of peaceful assemblies or otherwise.**

Right to freedom of association

87. **The Special Rapporteur calls upon the competent authorities to:**

(a) **Ratify outstanding international labour conventions, particularly the ILO Forced Labour Convention, 1930 (No. 29), Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), Right to Organise and Collective Bargaining Convention, 1949 (No. 98), Equal Remuneration Convention, 1951 (No. 100) and Discrimination (Employment and Occupation) Convention, 1958 (No. 111);**

(b) **Increase funding and staffing at the National Labour Relations Board and the Department of Labour to vigorously enforce the National Labour Relations Act and other labour laws;**

(c) **Ensure that migrant workers involved in ongoing labour disputes are not deported for immigration violations until after the disputes are resolved;**

(d) **Take measures to strengthen the independence of the National Labour Relations Board, so that its work and budget are not subject to partisan politics;**

(e) **Amend the National Labour Relations Act to:**

(i) **Impose tougher sanctions on employers who are found to delay or engage in bad faith tactics during collective bargaining negotiations;**

(ii) **Prohibit state "right to work" laws as a violation of workers' right to freedom of association under international human rights law;**

(iii) **Strengthen sanctions against employers who engage in unfair labour practices, adding fines, punitive damages and compensation provisions, in order to deter future violations of workers' rights;**

(iv) **Forbid the permanent replacement of striking workers;**

(v) **Allow union meetings to be held without management being present and information to be distributed in the workplace without harassment or retaliation; also give union organizers the right of rebuttal in "captive audience" meetings or to hold their own such meetings without harassment or retaliation;**

(f) **Provide legal assurance for not-for-profit organizations and their donors that legitimate aid work in conflict areas will not immediately attract sanctions or adverse actions;**

(g) **Adopt a consistent policy of "sectoral equity" in the regulation of businesses and associations (including trade unions) to ensure a fair, transparent and impartial approach to regulating each sector;**

(h) **Revamp campaign finance laws to reduce the influence of money in the political process and to ensure a level playing field for the expression of the concerns of all citizens during elections;**

(i) **Establish an independent counter-terrorism ombudsperson to monitor compliance of United States laws and practices in the fight against terrorism with international human rights law.**

88. **The Special Rapporteur calls upon businesses to commit to upholding the rights to freedom of association for workers, as defined in international law, even**

when domestic standards are lower, and to operationalize the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework.

89. **The Special Rapporteur calls upon civil society to:**

(a) **Continue its important advocacy and monitoring work in relation to the enjoyment of the rights to freedom of peaceful assembly and of association;**

(b) **Use every opportunity to participate in decision-making processes, including in relation to the elaboration of draft legislation;**

(c) **Follow up and monitor the implementation of the recommendations contained in the present report.**

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Corrigendum

The title of A/HRC/35/28/Add.2 should read as above.

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